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# राजपत्र, हिमाचल प्रदेश

## (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार, 3 जनवरी, 2005/13 पौष, 1926

हिमाचल प्रदेश सरकार

**HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION**

**NOTIFICATION**

*Shimla-2, the 31st December, 2004*

**No. HPERC/Reg/No. 418.**—The following draft regulations, which the Himachal Pradesh Electricity Regulatory Commission proposes to make in exercise of powers conferred by section 181 read with sections 39, 40, 42, and clause (c) of sub-section (1) of section 86 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, are hereby published, as required by sub-section (3) of section 181 of the said Act, for the information of all the persons likely to be affected thereby; and,

notice is hereby given that the said draft regulations will be taken into consideration after the expiry of thirty days from the date of their publication in the Rajpatra, Himachal Pradesh, together with any objections or suggestions which may within the aforesaid period be received in respect thereto.

The objections or suggestions in this behalf should be addressed to the Secretary, Himachal Pradesh Electricity Regulatory Commission, Keonthal Commercial Complex, Khalini, Shimla – 171002.

### **DRAFT REGULATIONS**

**1. Short title, commencement and Extent.**—(1) These regulations shall be called the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004.

(2) These regulations shall come into force on the date of their publication in the Rajpatra, Himachal Pradesh.

(3) These regulations shall apply to open access for use of intra-State transmission system and/or distribution system of the licensees in the State.

**2. Definitions.**—In these regulations, unless the context otherwise requires, –

- (1) “Act” means the Electricity Act, 2003 (36 of 2003);
- (2) “allotted transmission capacity” means the quantity of power measured in Mega Volt Amperes allowed to be transferred between the specified point(s) of injection and point(s) of drawl by an open access customer on the intra-State transmission system and the expression “allotment of transmission capacity” shall be construed accordingly;
- (3) “applicant” means a person who makes an application for availing open access to any transmission and/or distribution system within the State in accordance with these regulations;
- (4) “bye-law” means the Open Access Committee (Transaction of Business) Bye-laws, framed for the transaction of the business of the Committee under regulation 3 of these regulations;
- (5) “captive generating customer” means a person who has constructed a captive generating plant and maintains and operates such plant and requires open access for the purpose of carrying electricity from his captive generating plant to the destination of his use;
- (6) “Commission” means the Himachal Pradesh Electricity Regulatory Commission;
- (7) “Committee” shall mean the Himachal Pradesh Open Access Committee constituted under regulation 3 of these regulations to act as the Nodal Agency under these regulations;
- (8) “grid code” means the grid code specified by the Central Commission under clause (h) of sub-section (1) of section 79 of the Act and includes the State Code specified by the State

Commission under clause (h) of sub-section (1) of section 86 of the Act;

- (9) "guidelines and procedures" means the guidelines and procedures for open access laid down under regulation 10 of these regulations;
- (10) "open access consumer" or "open access customer" means any person who is availing open access to any transmission and/or distribution system in terms of these regulations;
- (11) "open access in distribution" means the non-discriminatory provision for the use of the distribution system and associated facilities by any licensee or consumer or person engaged in generation, in accordance with these regulations;
- (12) "open access in transmission" means the non-discriminatory provision for the use of the transmission system and associated facilities by any licensee or consumer or person engaged in generation, in accordance with these regulations;
- (13) "reserved transmission capacity" means the capacity on the transmission system reserved for an open access customer in accordance with these regulations, for transmission of specified quantity of power measured in Mega Volt Amperes, between the specified point(s) of injection and point(s) of drawl and the expression "reservation of transmission capacity" shall be construed accordingly;
- (14) "Schedule" means the schedule to these regulations;
- (15) "State" means the State of Himachal Pradesh; and
- (16) other words and expressions used in these regulations and not defined herein but define in the Act shall have the same meaning as are assigned to them in the Act.

**3. Open access committee.**—(1) The Chairperson of the Commission shall constitute a Committee, to be known as the 'Open Access Committee' (hereinafter referred to as "the Committee") to act as the Nodal Agency for arranging the open access within the State in accordance with these regulations and 'the Himachal Pradesh Open Access Committee (Transaction of Business) Bye-laws' and, 'the guidelines and procedures for open access' laid thereunder.

(2) The Committee shall be responsible for the implementation of these regulations and shall act under the supervision and control of the Commission.

(3) The Committee shall consist of one representative each from the State Load Despatch Centre, and the State Transmission Utility to be approved by the Commission and one person to be nominated by the Commission from amongst its staff and the representative of the Commission shall be its Chairperson. The member includes an alternate member nominated by the State Load Despatch Centre, the State Transmission Utility or the Commission, whose views shall be construed to be the views of the incumbent member whom he represents:

Provided that the members representing the State Load Despatch Centre and the State Transmission Utility, shall not, unless otherwise approved by the Commission in writing, be officers of a rank below the rank of the Superintending Engineer or equivalent.

(4) The Open Access Committee (Transaction of Business) Bye-laws, shall be as set out in Schedule-I of these regulations. The Committee may, from time to time in consultation and with the approval of the Commission, make new or additional bye-laws or may amend or repeal the said bye-laws.

(5) The Committee shall meet as often as may be necessary to dispose of its business and at least once each week and shall be entitled to dispose of matters, referred to it, by circulation and a resolution passed by circulation shall be as valid and effectual as a resolution duly passed at a meeting of the Committee.

(6) The Committee shall be entitled to collect such fee, as may be fixed by the Commission from time to time, from the applicants seeking open access and the fee so collected shall be deposited in the "Himachal Pradesh Open Access Committee Fund" and shall be utilized towards the costs associated with the operations and conduct of the business of the Committee.

(7) All decisions of the Committee shall be taken with unanimous consent of all members and the Committee shall, wherever necessary, consult all concerned parties while dealing with an application for availing open access:

*Provided that in case of difference of opinion amongst the members of the Committee, the matter shall be adjudicated upon by the Commission and the decision of the Commission shall be final and binding.*

**4. Eligibility for open access.**—(1) The licensees and the generating companies including the persons who have established a captive generating plant and customers shall be eligible for non-discriminatory open access to the intra-State transmission system of the State Transmission Utility or any transmission licensee subject, however, to the availability of adequate transmission capacity and absence of operational constraints in such intra-State transmission system and further subject to the payment of the transmission charges as may be determined by the Commission from time to time:

*Provided that in the event such open access is for the use by an open access customer including the transmission or for otherwise conveyance or wheeling of electricity as required by any person for delivery to such open access customer in the area of supply of a distribution licensee in the State, the open access to the intra-State transmission system shall be subject to payment of a surcharge as may be determined by the Commission from time to time under sections 39, 40 & sub-section (2) of section 42 of the Act.*

(2) The licensees and the generating companies including the persons who have established captive generating plant and other customers shall be eligible for open access to the distribution system of the distribution licensee in accordance with the phasing of open access as provided under regulation 8 and further subject to absence of operational constraints in the distribution system and also the payment of the wheeling charges as may be determined by the Commission from time to time:

*Provided that in the event such open access is for the use by an open access consumer including the conveyance or wheeling of electricity as required by any person for delivery to such consumer in the area of supply of a distribution licensee in the State, the open access to the distribution system shall be subject to payment of a surcharge and the additional surcharge as may be specified by*

the Commission as provided under section 42 of the Act.

**Explanation.**—For the purpose of the open access under this regulation, the operational constraints in the distribution system shall include the availability of the adequate capacity in the transmission and distribution system, appropriate metering and energy accounting system where the electricity to be wheeled can be correctly measured and accounted for and such other factors which may have an impact on the distribution licensees' business of supplying electricity to consumers in the area of supply.

**5. Special provisions for existing open access customers.**—(1) The existing customers and the generating companies availing open access to the intra-State transmission system and the distribution system in the State under an existing agreement, or arrangement, shall be entitled to continue to avail the open access on the terms and conditions applicable to them as before for the period of the existing agreement or arrangement, subject to the payment of the transmission charges, the wheeling charges and the applicable surcharges as may be determined by the Commission from time to time:—

Provided that the existing customers and the generating companies availing open access shall submit to the Committee, the details of capacity utilized, point of injection, point of drawl, duration of availing open access, peak load, average load or such other information as the Committee may require, within 45 days of its constitution.

(2) The Committee shall ensure continued availability of transmission and/or distribution capacity as applicable to the existing licensee or generating companies under the existing agreements :

Provided that the issues not forming part of the existing agreements shall be regulated by these regulations.

**6. Categorisation of open access customers.**—(1) The open access customers shall be divided into two categories based on the duration of the use of the intra-State transmission system or the distribution system, namely:—

- (a) the long-term open access customers, and
- (b) the short-term open access customers.

(2) The person availing or intending to avail open access for a period of 5 years or more shall be the long-term open access customer.

(3) The person availing or intending to avail open access for a period of upto 1 year shall be the short-term open access customer.

Provided that a short-term open access customer shall be entitled to obtain fresh open access after expiry of his term and shall be treated as a new applicant for capacity allocation:

Provided further that the existing beneficiaries of the State transmission system or of the distribution system owned and operated by the State Transmission Utility or by the distribution licensee shall be deemed to be the long-term open access customers 'for a period of five years' for the particular State

transmission system owned or operated by the State Transmission Utility or the particular distribution system owned or operated by the distribution licensee for the purpose of these regulations.

**7. Criteria for allowing open access.**—(1) The long-term open access in transmission and distribution shall be allowed in accordance with the grid code and distribution/supply code.

(2) The short-term open access in transmission shall be allowed if request can be accommodated by utilizing:—

- (a) inherent design margins;
- (b) margins available due to variation in power flows;
- (c) margins available due to in-built spare transmission capacity created to cater to future load growth; and
- (d) margins available due to unutilized transmission capacity by the long term open access customer.

**8. Phasing of open access to distribution system.**—(1) Open access in distribution system in the State shall be allowed to any open access customer or person in the following phases subject to the absence of the operational constraints and having regard to other relevant factors:—

Phases	Contract demand	Date from which open access shall be allowed
Phase I	5 MVA and above	1 <sup>st</sup> April, 2005
Phase II	Above 2 MVA but not exceeding 5 MVA	1 <sup>st</sup> April, 2006
Phase III	Above 1 MVA but not exceeding 2 MVA	1 <sup>st</sup> April, 2007

(2) Based on the experience of open access in Phase I, the Commission may revise the phasing under sub-regulation (1) for allowing open access in subsequent phases.

**9. Priority in allotment.**—(1) The priority for allotment shall be determined on the following basis:—

- (a) the long-term open access customer shall have priority over the short-term open access customer ; and
- (b) amongst the short-term open access customers, a distribution licensee shall, where the Commission in its discretion determines that it would be in the public interest to do so, and such discretion is exercised by the Commission either generally or specifically, have priority over any other Short-term open access customer.

(2) Notwithstanding anything contained in sub-regulation 1, every person who has established captive generating plant and maintains and operates such plant shall have the right to open access for the purpose of carrying electricity from such captive generating plant to the destination of his use regardless of the contract demand but subject to the operational constraints.

(3) In case of short term open access customers, at given point of time, if all the requests for

access can be accommodated, each short term open access customer shall pay the transmission charges in accordance with regulation 15.

- (4) (a) In case of short term open access, if the capacity sought to be reserved 'by the open access customers is more than the available transmission capacity at that point of time, the State Load Despatch Centre shall invite snap bids through fax/Email.
- (b) The floor price for the bidding shall be the price determined in accordance with regulation 15;
- (c) The bidders shall quote price in terms of percentage points above the floor price;
- (d) The reservation of transmission capacity shall be made in decreasing order of the price quoted;
- (e) In case of equal price, if required, the reservation of transmission capacity shall be made pro rata to the capacity sought;
- (f) The open access customer getting reservation for a capacity less than the capacity sought by him shall pay charges quoted by him and the open access customers getting transmission capacity reservation equal to the capacity sought by them shall pay charges quoted by the last open access customer getting reservation of transmission capacity.

(4) Notwithstanding anything contained in this regulation, the Commission may, at any time, having regard to the necessity to promote and develop market in the State, review the priority accorded by this regulation to any category of open access customers.

(5) Within the category (long-term or short-term), there shall be no discrimination between open access customers and self use by the licensee.

**10. Procedure for seeking open access.**— (1) The open access customer seeking open access shall file an application, in the format prescribed in the guidelines and procedures for open access laid hereunder sub-regulation (2), to the Committee containing details regarding the purpose, the capacity in the system to be earmarked for the applicant, the maximum number of units to be transmitted or wheeled in the system at any point of time, the point of injection, the point of drawl, duration of availing open access, peak load, average load and any other additional information as may be required by the Committee.

(2) The guidelines and procedures for open access shall be as set out in Schedule-II of these regulations. The Committee may, from time to time, in consultation and with approval of the Commission, lay new or additional guidelines and procedures for open access or may amend or repeal the said guidelines and procedures.

(3) The application shall be accompanied by a fee for open access in transmission and distribution, as given below, in the name and in the manner laid down in the guidelines and procedures for open access:—

Sl.No.	Description	Long term	Short term
1.	Transmission	Rs.1,00,000	Rs.10,000
2.	Distribution	Rs.50,000	Rs.5,000

(4) The Committee may, in consultation with the licensee(s), assess the capacity available and the existence or absence of operational constraints in permitting open access and communicate the decision to the applicant in accordance with the guidelines and procedures laid down under sub-regulation (2) of this regulation:

Provided that wherever it is expedient so to do, the Commission may, for reasons to be recorded in writing, increase or decrease the limits for the communication of the decision to the applicant :

(5) In the event the open access can be provided without further system strengthening or delay, the Committee shall intimate in-principle, approval to the applicant alongwith prerequisites required for activation of open access as may be specified by the Commission from time to time, within 15 days of the receipt of the application.

(6) In the event, the Committee is of the opinion that open access cannot be allowed without system strengthening or because of other operational constraints and further studies are required, the Committee shall seek the confirmation of the applicant to conduct such studies. On receipt of confirmation from the applicant, the Committee may direct the licensee(s) to carry out such studies to identify the scope of such additional work for the system strengthening and removal of operational constraints, the estimated cost and the probable date from which the open access can be allowed after carrying out the requisite works of the system strengthening.

(7) The licensee(s) shall carry out the studies immediately on receipt of directions from the Committee for open access under sub-regulation (6) and intimate results of the studies within 90 days of the receipt of the application:

Provided that before carrying out the studies, the applicant shall deposit with the licensees 50% of the estimated cost of carrying out the studies.

(8) The Commission shall, on the recommendations of the Committee and depending on the usefulness of the studies carried out under sub-regulation (7), either direct the applicant to reimburse the actual expenditure incurred by the licensee(s) for system strengthening studies and/or allow the cost so incurred to be included as a permissible expense in the Annual Revenue Requirement of the licensee:

Provided that where the Commission directs the costs to be included as permissible expense in the Annual Revenue Requirement of the licensee, the amount deposited under sub-regulation (7) shall be refunded to the applicant within 15 days.

(9) The Commission may, at its own discretion or on the recommendations of the Committee, undertake such other studies as it may consider necessary for the development of the open access at a cost to be incurred by the State Load Despatch Centre or the transmission licensee or the distribution licensee as directed by the Commission, which may be allowed as a pass through while determining their Annual Revenue Requirements.

(10) In order to allow open access in cases where system strengthening is involved, the Commission may direct the licensee to include the estimated cost of such works in their annual investment plan to be submitted to the Commission for its approval:

Provided that before carrying out the works, the applicant shall deposit with the licensee, 50% of the estimated cost of carrying out the works:

Provided further that if the system strengthening works are intended to benefit the individual consumer, the licensee shall have the right to recover the expenditure reasonably incurred:

Provided further that where the system strengthening works are included in the investment plan of the licensee, the expenditure for system strengthening works shall be allowed as a pass through.

**11. Determination of capacity.**—(1) The availability of capacity in the intra State transmission and distribution system including existence or absence of operational constraints affecting open access being allowed shall be determined by the Committee after considering the submissions made by the transmission/distribution licensees and the person seeking open access.

(2) In the event of any dispute in the matter of operational constraints in both, transmission system and the distribution system, on the determination under sub-regulations (1), the same shall be referred by the Committee to the Commission for its decision.

(3) (a) The Commission may, while deciding the dispute under sub-regulation (2) or otherwise by a general or special order made from time to time, lay down the conditions to be complied with by the persons seeking open access and the open access shall be allowed only subject to the due satisfaction of such conditions.

(b) The conditions to be satisfied may include construction, operation or maintenance of dedicated electric lines or works from the sub-stations or feeder line or undertaking such other works as the Commission may decide as necessary to allow open access without operational constraints.

**12. Non-utilisation of capacity by open access customers.**—(1) A long-term open access customer shall, without prior approval of the Committee, not relinquish or transfer his rights and obligations specified in the open access agreement, under regulation 23.

(2) The reserved transmission capacity shall not be transferred by a short-term open access customer to any other open access customer.

(3) In the event of under utilization of the capacity contracted under open access, the short-term open access customer may file an application to the Committee alongwith the reasons to surrender, cancel or reduce the capacity allocated to it notwithstanding anything to the contrary contained in the contract between the licensee and the open access customer:

Provided that in the event of surrender or cancellation or reduction of capacity, the open access customer shall pay the compensatory charges as may be determined by the Commission :

Provided further that such compensatory charges shall not exceed the charges payable by the open access customer if he were to utilize the capacity.

(4) The Committee may, after affording reasonable opportunity of being heard, reduce or cancel

the allotted/reserved capacity of an open access customer when such a open access customer frequently under-utilises the capacity allotted/reserved to him.

(5) In the event of cancellation or reduction under sub-regulation (4), the open access customer shall bear full transmission charges, wheeling charges and scheduling and system operation charges based on original reserved capacity and the period for which the capacity was reserved.

**13. Curtailment priority.**—If because of transmission /distribution system constraints or otherwise during force majeure events, it becomes necessary to curtail the services, the services of short-term open access customers shall be curtailed first followed by the long-term open access customers and thereafter the captive generators:

Provided that within the category, the open access customer shall have equal curtailment priority and shall be curtailed on pro-rata basis. The Committee shall co-ordinate in this regard.

**14. Charges for open access.**— (1) The open access customers shall pay the transmission charge, wheeling charge, surcharge, additional surcharge and compensatory charge, other charge including the service charge, unscheduled use charge and penal charge for wrongful use of the transmission system or the distribution system as the Commission may, in exercise of its powers under sections 61, 62, 86 and other provisions of the Act, determine from time to time as a part of tariff or otherwise decide or authorize the licensee.

(2) The Commission may, while determining the charges for open access to the transmission system or distribution system, provide for adjustment of losses in the system.

**15. Transmission charges.**— The charge for use of the system of the transmission licensee for intra-State transmission shall be regulated as under, namely:—

- (i) the annual transmission charge shall be determined by the Commission in accordance with the terms and conditions of tariff notified by the Commission from time to time and after deducting the adjustable revenue from the short term open access customers, these charges shall be shared by the long term open access customers.
- (ii) where a transmission system has been established for exclusive use of an open access customer, the transmission charges for such dedicated system shall be borne entirely by such open access customer till such time surplus capacity, if any, is used for other persons or purposes;
- (iii) in the event of any surplus capacity discussed in clause (ii) of being allotted/reserved to any other open access customer(s), the transmission charges payable by each open access customer would be on a pro-rata basis of the capacity allotted/reserved to him.
- (iv) (a) The Commission shall, while determining the charges payable by the short-term open access customer, be guided by the following methodology:—

$$ST\_RATE = 0.25 \times [TSC / Av\_CAP] / 365$$

Where:

ST\_RATE is the rate for short-term open access customer in Rs. per MW/MVA per day.

“TSC” means the Annual Transmission Charges of the transmission licensee for the previous financial year determined by the Commission.

“Av\_CAP” means the average capacity in MVA served by the transmission system of the transmission licensee in the previous financial year and shall be the sum of the generating capacities connected to the transmission system and contracted capacities of other transactions handled by the system of the transmission licensee.

[The formula has been prescribed in line with the CERC regulations. The rationale between allotment/ reservation of the capacities at the CERC (Country) level and SERC (State) level needs to be clearly understood before prescribing such a formula. In case of PGCIL, a significant portion (or entire) of its capacity will be allotted to the Long term customers (existing beneficiaries viz. SEB's, Distribution Companies etc.) and thus allowing usage of spare capacity by the short term customers would be in the overall interest of the network operator and the users. However, at the state level, the distribution licensee (as and when it happens) would be the major beneficiary and potential long term customer. Apart from these, some OA customer who are allowed OA under the present regulations are also likely to be long term customers if their usage justifies their being long term customers. Given that the proposed prescribed charges are just 25% for the short term customers, it is very likely that some of the OA customers, who would have otherwise been long term customer, can easily opt for being a short term customers. Being short term customer would also not pose any risk of not getting supply since it is unlikely that there would be significant increase in usage by other customers. Thus most of the large customers would avail a short term category and benefit by paying a much lower charge. On the other hand, other small customers in the State would be forced to pay for the entire costs of the transmission licensee (as reduced by the revenue from short term customers) and would be put in an unfair situation. In view of the above, it is suggested that there should not be any differential between the short and long term charges and in worst case, the differential should not be significant :

- (b) The transmission charges payable by a short-term open access customer shall be for one day and in multiples of whole number of days.
- (c) Non-availability of TSC for the transmission system shall not be reason for delay in providing transmission access and where TSC for any transmission licensee are not available, the per MVA per day charge applicable for the system owned by the State Transmission Utility shall be used.
- (d) The State Transmission Utility shall declare rate in Rs per MW/ MVA per day [the timing of such declaration is not clear, whether beginning of the year or after approval by the commission], which

shall remain fixed for a period of one year [ideally it should be for a financial year since the costs would be estimated for such a period]:

Provided that where reservation of transmission capacity has been done consequent to bidding in the manner specified in regulation 9 the ST\_RATE shall be taken as the floor price for bidding.

- (v) 25% of the charges collected from the short-term open access customer shall be retained by the transmission licensee and the balance 75% shall be adjusted towards reduction in the transmission charges payable by the long-term open access customers.

**16. Wheeling charges.**—The wheeling charges for open access in distribution shall be determined by the Commission in terms of the regulations framed by the Commission for determination of tariff and as per the tariff orders issued from time to time.

**17. Surcharge.**—(1) In addition to the transmission and wheeling charge, any open access customer, other than the captive generating customer, availing open access in transmission/distribution shall pay a surcharge specified by the Commission by regulations.

(2) The amount of surcharge shall compensate for the loss in the current level of cross-subsidy from the category of consumers to which the open access customer belongs and shall be paid to the respective transmission/distribution licensee of the area of supply.

(3) The surcharge and cross-subsidies shall be progressively reduced and eliminated in the manner as may be specified by the Commission by regulations.

**18. Additional surcharge.**—(1) An open access customer shall also pay to the distribution licensee an additional surcharge to meet the fixed cost of such distribution licensee arising out of his obligation to supply as provided under sub-section (4) of section 42 of the Act; and such additional surcharge shall be as specified by the Commission by regulations.

(2) Each distribution licensee shall submit to the Commission details of fixed costs, which the licensee is incurring towards his obligation to supply.

(3) In determining the additional surcharge by regulations, the Commission shall scrutinize the details of fixed costs submitted by the distribution licensee and invite and consider objections, if any, from the public and affected parties.

**19. Scheduling and system operation charges.**—(1) The scheduling and system operation charges payable to the State Load Despatch Centre by the open access customers shall be as specified by the Commission by regulation under sub-section (3) of section 32 of the Act.

(2) The scheduling and system operation charges collected by the State Load Despatch Centre in accordance with sub-regulation (1) shall be in addition to the fees and charges approved by the Commission.

**Explanation.**—The scheduling and system operation charges shall also be payable by a generating company availing open access under these regulations.

**20. Reactive energy charges .**—The payment for the reactive energy charges for the open access customers shall be calculated in accordance with the scheme applicable to the generators and open access customers for reactive charge input and drawl respectively as may be determined by the Commission from time to time.

**21. Obligation of distribution licensee to an open access customer.**—(1) Notwithstanding that a consumer is availing open access in distribution, the distribution licensee shall allow non-discriminatory flow of energy to such consumer in its area.

(2) Upon the expiry of the period of open access availed by a distribution open access customer or earlier termination thereof, the distribution licensee of the area shall commence supply of electricity to such open access customer at such tariff as may be determined by the Commission and on fulfillment of codal formalities of the distribution licensee for connection of the supply.

**22. Information system.**—The State Load Despatch Centre shall post the following information on its website in a separate web page titled “Open Access Information” on regular basis and also submit monthly reports to Committee containing such information listed as under:—

- (a) Name and address of open access customer;
- (b) Open access capacity granted;
- (c) Period of the access granted (start date and end date);
- (d) Point(s) of injection;
- (e) Point(s) of drawl;
- (f) Peak load transferred;
- (g) Average load transferred;
- (h) Maximum number of units to be transferred;
- (i) Transmission system/distribution system used;
- (j) Open access capacity used.

**23. Open access agreement.**—(1) An open access customer shall enter into agreement with the transmission licensee, distribution licensee, generator, traders and others, as applicable and fulfill other conditions as laid down under these regulations.

(2) The agreement shall generally be in the format as given in Schedule-III and shall *inter alia* provide for the eventuality of premature termination of agreement and its consequences on the contracting parties.

(3) After agreement has been entered into and copies furnished to the Committee, the Committee shall inform the open access customer the date from which open access will be available.;

**24. Metering and settlement.**—(1) The open access customer shall provide main meters, as may be specified by the Commission in the grid /distribution/ supply code for such open access customer

based on the voltage and current at the point of consumption, period of supply and tariff category.

(2) The generating company or a licensee contracting to effect supply to an open access customer shall provide main meters at interconnecting points as specified in the grid /distribution/ supply code, based on the open access customers to whom it will effect supply under open access or shall arrange communication of energy accounts to the State Load Despatch Centre effected through displacement/adjustment in the format as may be laid down by the State Load Despatch Centre on real time basis as well as periodically.

(3) The distribution licensee may provide check meters of the same specification as of the main meter for such meter installed by the open access customer and sub-regulations (1) and (2).

(4) The main and check meter shall be periodically tested and calibrated by the licensee, as the case may be, in the presence of other party involved, in accordance with the provisions contained in the grid /distribution/supply code. The main and check meter shall be sealed in the presence of both the parties. The defective meters shall be replaced within such time as may be specified in the grid/distribution/ supply code.

(5) Reading of main and check meters shall be taken periodically at the appointed day and hour by the authorized officer of the generating company or the licensee and the open access customer or his representative, if present. Meter reading shall be immediately communicated to the State Load Despatch Centre, the open access customer, the State Transmission Utility and the generating company/ the trader, as the case may be, by the generating company or the licensee, within 24 hours. Check meter readings shall be considered when main meters are found to be defective or stop functioning:

Provided that if the difference between readings of main and check meters *vis-à-vis* main meter reading exceeds twice the percentage error applicable for relevant accuracy class, both the main as well as check meters shall be tested and the defective meters replaced immediately:

Provided further that the licensee for the purpose of this regulation shall be the licensee operating and maintaining the system to which the customer's premises are connected.

(6) An open access customer or the generating company or the licensee may request the distribution licensee to provide main meters. In that case, the open access customer shall provide security to the licensee and shall pay the applicable meter rent and the main meter shall be maintained by the distribution licensee.

(7) The main and check meter shall have the provision to be read remotely by the State Load the Despatch Centre on real time basis, if such remote reading is desired.

**Explanation.**—The 'meter' shall include current transformers, voltage/potential transformers, wiring between them and meter box/panel.

**25. Communication facility.**—An open access customer shall provide for or bear the cost of equipment for communication upto the nearest grid sub-station or the State Load Despatch Centre as may be determined by the Committee.

**26. Compliance with electricity codes.**—The open access customer shall abide by the Indian Electricity Grid Code/the State Electricity Grid Code/Supply Code/Distribution Codes.

**27. Unscheduled interchange pricing.**—An open access customer shall be subjected to unscheduled interchange pricing mechanism as may be specified by the Commission from time to time if such open access customer draws power in variance with the agreed schedule for drawl under the open access arrangement.

**28. Redressal mechanism.**—(1) All disputes and complaints relating to open access shall be made to the Committee, which shall investigate and endeavour to resolve the grievances within 45 days:

Provided that where the open access customer is not satisfied with the redressal of grievance by the Committee, it may approach the Commission, whose decision shall be final and binding.

(2) The Commission may, while deciding the dispute under sub-regulation (1) or otherwise by a general or special order made from time to time, lay down the conditions to be complied by the transmission and distribution licensees and the persons seeking open access in regard to operational constraints and the open access shall be allowed only subject to the due satisfaction of such conditions.

**29. General conditions.**—(1) Nothing in these regulations shall be deemed to limit or otherwise affect the powers of the Commission to make such orders as may be necessary to meet the ends of justice.

(2) Nothing in these regulations shall bar the Commission from adopting, a procedure which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of a matter or a class of matters, deems it just or expedient for deciding such matter or class of matters.

(3) Nothing in these regulations shall bar the Commission from adopting, a procedure which is at variance with any of the provisions of these regulations, if the Commission, in view of the force majeure events, deems it just or expedient for deciding such matter or class of matters.

(4) Nothing in these regulations shall, expressly or impliedly, restrict the Commission from dealing with any matter or exercising any power under the Act for which no regulations have been framed, and the Commission may deal with such matters, powers and functions in a manner, as it considers just and appropriate.

**30. Powers to remove difficulties.**—If any difficulty arises in giving effect to any of the mission licensee(s), the distribution licensee(s), the State Load Despatch Centre, the generators, the Committee, the State Transmission Utility and the open access customer, to take such suitable action, not being inconsistent with the Act as may appear to the Commission to be necessary or expedient for the purpose of removing such difficulties.

By the order of Commission,

Sd/-

Secretary.

**APPLICATION FOR GRANT OF OPEN ACCESS**

(To be submitted by an Open Access Customer)

1. Name of the Open Access Customer

2. Type of open access required (Tick the appropriate option) : Long term \_\_\_\_\_  
Short term \_\_\_\_\_3. Would the transaction involve utilization of the distribution network ? Yes \_\_\_\_\_  
No \_\_\_\_\_

4. Address of Correspondence

5. Contact Address

**Prime Contact Person**

- a. Name
- b. Designation
- c. Phone No.
- d. FAX
- e. E-mail

**Alternate Contact Person**

- a. Name
- b. Designation
- c. Phone No.
- d. FAX
- e. E-mail

6. Details of power transfer requirement :

- a. Quantum of power to be transmitted (MW)
- b. Peak load to be transferred
- c. Average load to be transferred
- d. Name(s) of the injecting utility
  - \* Point(s) of injection of power
  - \* Its Quantum
  - \* Voltage level of the EHV sub-station
- e. Name(s) of drawee :
  - \* Point(s) of injection of power
  - \* Its Quantum

\* Voltage level of the EHV sub-station

*Note.*— In case of mismatch between quantum of power injected and drawl then details of balance power to other beneficiaries should be furnished.

7. Expected date of commencement of Open Access
8. Duration of availing Open Access
9. In case of Generating Station
  - a. Name of the promoter
  - b. Generation Capacity
  - c. Location of the Generation plant
  - d. No. of Units & Capacity of each unit
  - e. Type of fuel
  - f. Base load station or peaking load station
  - g. If peaking load, then what is the estimated hours of running
  - h. If it is a hydro plant, then whether it is – Run of the river /Reservoir/ Multipurpose / Pump storage
  - i. MU generation in an year in case of Hydro plant
  - j. Specify the step-up generation Voltage – 400KV or 220KV or any other voltage
  - k. Whether it is a identified project of CEA
  - l. Is it a captive Power Plant (Yes/No)
  - m. If Yes, details of utilization

Status of the Project : Existing/ Extension of existing project/ new project

0. In case of a new generation station

- a. Unit wise capacity and commissioning schedule
 

	Capacity (MW)	Commissioning schedule
* Unit-I		
* Unit-II		
* Unit-III		
* Unit-IV		
- b. Name(s) of the beneficiaries and their allocation of power
- c. Status of various clearances for the generation project
  - \* Land acquisition
  - \* Fuel agreement
  - \* Environment and forest clearance
  - \* TEC clearance, wherever required
  - \* Power purchase agreement with beneficiaries

11. Details of the Bank Draft :

- 
- \* Name of the issuing bank
  - \* Draft number
  - \* Date of issue
  - \* Amount

All utilities (including buyer, seller, trader) to the transaction shall abide by the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Open Access to Transmission and Distribution System) Regulations, 2004 dated [ ] as amended from time to time.

The Applicant hereby agrees to keep the Commission, the Nodal Agency and the STU indemnified at all times and undertakes to indemnify, defend and save the Commission, the Nodal Agency and the STU harmless from any and all damages, losses, claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the transactions under this Approval.

The provisions of the "Guidelines and procedures for Open Access in Transmission and Distribution" issued by the Nodal Agency are hereby agreed.

**Authorized Signatory**  
*of the Open Access Customer.*

Name :

Designation :

Seal :

Place :

Date :

**Schedule -1**  
**[See regulation 3 (4)]**

**THE HIMACHAL PRADESH OPEN ACCESS COMMITTEE (TRANSACTION OF BUSINESS)**  
**BYE-LAWS, 2004**

**CHAPTER-I**

**GENERAL**

**1. Short title.**—These bye-laws shall be called the Himachal Pradesh Open Access Committee (Transaction of Business) Bye-laws, 2004.

**2. Definitions .**—In these Bye-laws, unless the context otherwise requires,—

- (a) 'Act' means the Electricity Act, 2003 (36 of 2003);
- (b) 'bye-laws' means these bye-laws;
- (c) 'Commission' means the Himachal Pradesh Electricity Regulatory Commission;
- (d) 'Committee (Nodal Agency)' means the Himachal Pradesh Open Access Committee constituted under regulation 3 of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004; and
- (e) 'regulations' means the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulation, 2004;
- (f) other words or expressions occurring in these bye-laws and not defined herein but defined in the Act or the regulations shall have the same meaning as are assigned to them in the Act or in the regulation.

**3. Committee (Nodal Agency's) Office, hours of business and sittings.**—(1) The office(s) of the Committee (Nodal Agency) shall be at Keonthal Commercial Complex, Khalini, Shimla-171 002 or such other place as may be specified by the Commission, from time to time by an order made in that behalf.

(2) Unless otherwise directed, the office of the Committee (Nodal Agency) shall remain open on all days except on second Saturday of every month, Sundays and holidays notified by the Government of Himachal Pradesh. The working hours of the Committee (Nodal Agency) shall be from 10.00 A.M. to 5.00 P.M. The lunch break shall be from 1.30 P.M. to 2.00 P.M. or such timings as the Commission may direct.

(3) Where the last day for any activity falls on a day on which the office of the Committee (Nodal Agency) is closed and by reasons thereof the activity cannot be done on that day, it may be done on the next day on which the office is open.

(4) The Committee (Nodal Agency) may hold meetings for considering matters including disposal of Open Access applications at the office or any other place on days as may be decided from time to time.

**4. Language of the Committee (Nodal Agency) .**—Unless otherwise permitted by an order of the Commission, the proceedings of the Committee (Nodal Agency) shall be conducted in English or

Hindi or such other language as may be notified by the Commission for conduct of its official business.

**5. Functions of the Committee (Nodal Agency).—**The Committee (Nodal Agency) shall be responsible for the implementation of the Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004 and shall act under the supervision and control of the Commission.

**6. Functions and duties of the Chairperson of the Committee.—**(1) For the exercise of powers, the performance of functions and discharge of the duties of the Committee, the Chairperson shall be assisted by a Convener to be appointed by him.

(2) The Chairperson of the Committee (Nodal Agency) shall exercise the following powers and perform the following duties with the help of the Convener, namely:—

- (a) he shall have custody of the records of the Committee (Nodal Agency);
- (b) he shall receive or cause to receive all applications, complaints or references pertaining to the Committee (Nodal Agency);
- (c) he shall scrutinize all documents, including, inter alia, applications, complaints or references and shall be entitled to seek clarifications or rectifications upon the same and issue appropriate directions pertaining to the acceptance or rejection of such documents;
- (d) he shall carry out such functions under the regulations, as may be assigned to him by the Committee (Nodal Agency);
- (e) he shall place before the Committee (Nodal Agency), the details of the applications received, applications disposed and applications pending and also periodically brief the Committee (Nodal Agency) on any issue of significance that the Committee (Nodal Agency) might be dealing with;
- (f) he shall provide notice for meeting, prepare the agenda for meetings and minute the proceedings of the meetings of the Committee (Nodal Agency); and
- (g) he shall, in consultation with the Committee (Nodal Agency) recruit the necessary supporting staff to enable the Committee (Nodal Agency) to function effectively;

**7. Constitution of the Fund. —**(1) The Committee (Nodal Agency) hereby constitutes a Fund to be called the 'Himachal Pradesh Open Access Committee Fund'.

(2) The Fund shall comprise of—

- (i) all fees/charges received by the Committee (Nodal Agency) under the Electricity Act, 2003;
- (ii) all sums received by the Committee (Nodal Agency) from other sources.

**8. Application of the Fund. —**The fund shall be applied for meeting —

- (a) the salary, allowances and other remuneration of the staff of the Committee;
- (b) the expenses of the Committee in discharge of its functions under the regulations;
- (c) the costs associated with the operation and transaction of the business of the Committee;
- (d) the expenses on objects and for purposes authorised by the open access regulations.

**9. Maintenance of accounts.** — (1) The Committee shall maintain proper accounts and other records as may be specified by the Commission.

(2) At the close of financial year the Committee shall furnish a statement depicting therein the opening balance, amount utilised and the balance remaining unutilised.

**10. Opening of Bank Account and drawl of funds.—**

- (1) (a) The Committee shall open account in one or more nationalised banks.
- (b) The Committee shall make available the specimen signatures of two of its officers to be the authorised signatory to the nominated bank for its information and records.
- (c) The link branch of the nominated bank shall furnish daily payments and receipts scrolls to the Committee, which will ensure that the cheques appearing in the payment scrolls are those, issued by the Committee and reconcile each transaction with the bank.
- (2) (a) All funds received shall be paid into the Committee's account in the bank and shall not be withdrawn except on presentation of a cheque signed by the Convener of the Committee or such other officer as authorised by the Committee.
- (b) These officers shall be responsible for monitoring the proper transactions of receipts and payments on behalf of the Committee.
- (c) These officers shall also be responsible to ensure that the amount of the cheques/demand drafts deposited in the accredited banks have been timely credited in the account of the Committee and also reconcile the receipt and payment accounts with them.

**11. Audit of the accounts.** —(1) The accounts of the Committee shall be audited at such intervals as may be specified by the Commission.

(2) The accounts of the Committee as certified by the auditor together with audit report thereon shall be forwarded annually to the Commission.

**12. Delegation of Powers.**—The Chairperson of the Committee (Nodal Agency) may as he deems necessary, delegate to any representative of the Committee (Nodal Agency) such powers and functions as are specified under bye-law 7.

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**CHAPTER-II****GENERAL RULES CONCERNING THE PROCEEDINGS OF THE COMMITTEE (NODAL AGENCY)**

**13. Proceedings of the Committee (Nodal Agency).—**(1) Committee (Nodal Agency) may from time to time hold meetings, discussions, deliberations, investigations and consultations, as it may consider appropriate in discharge of its functions under the Regulations.

(2) The Committee (Nodal Agency) shall meet as often as may be necessary to dispose of its business and at least once each week. The Committee (Nodal Agency) shall be entitled to dispose of matters referred to it by circulation and a decision taken by circulation shall be as valid and effectual as a decision duly taken at a meeting of the Committee (Nodal Agency).

(3) All decisions of the Committee (Nodal Agency) shall be taken with unanimous consent of all members and the Committee (Nodal Agency) shall, where necessary, consult with all concerned parties while dealing with an application for availing open access.

(4) The Committee (Nodal Agency) shall allow the applicant an opportunity to place his views before issuing its final decision in case open access cannot be granted on the terms requested by the applicant.

**14. Dispute resolution and review of decisions.—**(1) Any person aggrieved by a decision of the Committee (Nodal Agency) or may upon the discovery of new and important material or evidence or otherwise which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decision was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reason, may apply for a review of such decision, within forty-five (45) days of the date of the decision, to the Commission.

(2) An application for such review shall be filed in the same manner as a petition is filed to the Commission. Depending on whether or not there is sufficient ground for review, the Commission would either accept or reject requests for such reviews.

(3) When it appears to the Commission that there is no sufficient ground for review, the Commission shall reject such review application.

(4) When the Commission is of the opinion that the review application should be granted, it shall grant the same.

**Schedule-II**  
**(See regulation 10)**

**GUIDELINES AND PROCEDURES FOR OPEN ACCESS**

**1. Introduction.**—(1) These guidelines and procedures are being issued in compliance of the provisions of the “Himachal Pradesh Electricity Regulatory Commission (Terms and Conditions for Open Access) Regulations, 2004”.

(2) These procedures have been laid down considering the avenues available and the intricacies involved. However, some problems may still be experienced and the various implications would be known only after practical experience is gained by way of implementing these procedures. In order to resolve the same, these procedures would be reviewed, if necessary, from time to time.

(3) The Committee may review/revise/modify/amend the provisions of these procedures with the approval of the Commission prospectively as and when considered necessary.

(4) The Committee may from time to time in consultation and with approval of the Commission lay new or additional guidelines and procedures for open access or may amend or repeal the said guidelines and procedures prospectively. These procedures shall apply to all transactions of Open Access from the date from the date of these regulations coming into force.

**2. Application and its enclosures.**—(1) A separate application shall be submitted for each transaction to the Committee as per the enclosed format at appendix-I. The application shall be submitted in a cover marked ‘Application for Short-term Open Access’ or ‘Application for Long-term Open Access’.

(2) The application shall be accompanied by a fee of Rs. 1,00,000 in case of long-term transmission open access, Rs. 10,000 in case of short term transmission open access and Rs.50,000 in case of long term distribution open access and Rs.5,000 in case of short -term distribution open access. An applicant seeking distribution open access, would also pay the applicable fee for transmission open access if the transmission network is used to complete the open access transaction requested by the applicant.

(3) The amount collected by the Committee shall be deposited in a separate account to be designated as the “Himachal Pradesh Open Access Committee Fund”.

(4) All applications received, by the Committee during the normal working hours on a particular day shall be treated as to have been received together.

(5) An incomplete / vague application and an application not found to be in conformity with these procedures and the Regulations shall be rejected.

**3. Processing of applications.**—(1) The processing time provided under the Regulations shall be reckoned as a working day (excluding holidays) for each day provided therein.

(2) While processing the applications, the Convener of the Committee, appointed under the Transaction of Business bye-laws of the Committee, shall place before the Committee the applications received from the customers seeking open access. The details of the requests should be discussed and any further clarification, information as may be required to enable any decision on the application shall be sought from and arranged by the respective representative of the Committee. The processing of the application shall be done immediately on the receipt of the information sought by the Committee within the stipulated period.

(3) In case the Committee does not receive further information from the relevant representative of the State Transmission Utility/ the Licensees/ State Load Dispatch Centre within the stipulated period, it will be considered as deemed acceptance by the representative/ relevant Entity for the provisions of the open access unless based on a specific issue it is considered that a further period is necessary to collate the information for the decision making.

(4) Subject to the provision of sub-regulations (5), (6), (7), (8) and (9) of regulation 10 of open access regulations, the Committee shall intimate approvals, prerequisites for open access activation, requirement of system strengthening studies, advance deposits, reimbursement of actual expenditure, permission of expenses in annual revenue requirement and undertaking of necessary studies by the Commission.

**4. Approval of applications.**—(1) The Committee shall on receipt of directions from the Commission communicate to the applicant, the details of the studies within 90 days and the costs if any to be recovered.

(2) As far as practicable, the following time-schedule shall be adhered to by the Committee for processing of application for grant of open access:

S.No.	Type of service/activity	Maximum processing time
1.	<b>Short-term service :</b>	
	-Upto one day	Twelve hours
	-Upto one week	Two days
	-Upto one month	Seven days
	-Upto one year	Thirty days
2.	<b>Long-term service :</b>	
	-Intimation regarding feasibility of Access without system strengthening.	Thirty days
	-Intimation of results of studies for system strengthening with cost estimates and completion schedule.	Ninety days

(3) The Committee shall issue transaction-wise approvals from the point of injection of the seller to the point of drawl of the buyer.

(4) Upon receipt of the Committee's approval, the applicant shall confirm his acceptance/refusal atleast 5 days prior to the start of the period requested for the open access alongwith necessary payment for availing open access.

(5) Only after receipt of the acceptance and requisition from the applicant, the "Day-ahead scheduling" shall be started. A non-receipt or a delayed receipt of the acceptance shall be considered as a refusal by the applicant.

(6) The following shall be enclosed alongwith the acceptance by the open access customer:—

(i) Copies of the agreements/MOUs entered by the buyer / seller / trader as may be the case.

(ii) Advance payment (for the intended transaction) remitted through a bank draft for transactions upto 31 days covering the following:—

- (a) transmission charges of the State Transmission Utility/Transmission Licensee payable to the respective State Transmission Utility / Licensee;
- (b) Wheeling charges, surcharge and additional surcharge payable to the Distribution Licensee;
- (c) scheduling and system operation charges payable to the State Load Dispatch Centre;
- (d) handling and service charges payable to the Committee.

(7) In case of transaction for a period exceeding 31 days, the customer shall make monthly payment to the Committee covering the applicable transmission charges, wheeling charges, surcharge and additional surcharge, scheduling and system operation charges together with the handling and service charges. The advance payments shall be adjustable and applicable refunds, if any, shall be made on the expiry of the approved period of transaction.

(8) The rates for the charges mentioned in sub regulation (7) shall be in accordance with the regulation as may be framed by the Commission from time to time.

(9) None of the charges payable by the Open Access customers and/or any other Utilities involved in the transaction shall be adjusted by them against any other payments/charges.

(10) In case of a force majeure condition as determined and notified by the State Load Dispatch Centre, the State Load Dispatch Centre may curtail/suspend a scheduled transaction. The decision of the State Load Dispatch Centre as to the existence of a force majeure condition shall be final and binding.

**5. Scheduling.**—(1) The customer shall coordinate with each of the Utilities involved, and furnish the transaction details to the State Load Dispatch Centre, on a regular basis, so as to enable the State Load Dispatch Centre to incorporate the transaction in the day-ahead schedules and revisions thereof. In case an anomaly is reported by any of the Utilities involved in the transaction, the State Load Dispatch Centre shall not schedule the same without intimation to the customer.

(2) The ramp-up/ramp-down, if required, in the daily schedules issued by the State Load Dispatch Centre on account of such transactions, shall commence at the time of commencement of the transaction and shall end at the time of termination of the transaction.

(3) The 'Daily Schedules' finalized / issued by the State Load Dispatch Centres shall incorporate the intra-State Open Access transactions in the drawl schedules of the State and/or the injection schedules of the concerned generators and communicate to National Regional Load Dispatch Centre.

(4) During the course of the day of operation, requests for revisions of the schedules of the Short-term Open Access transactions shall not be entertained, by the State Load Dispatch Centre.

**6. Commercial conditions for the short-term open access customers.**—(1) All payments associated with short term Open Access shall be made by the applicant/ customer to the Committee for each transaction.

(2) All payments shall be remitted only by Bank draft drawn in favour of respective the State Transmission Utility / the Licensee/ the State Load Dispatch Centre payable at par at the location of the respective entity.

(3) The alternative of remittance of payments through an irrevocable revolving letter of credit instead of bank draft shall be considered during the future reviews of these guidelines and procedures, after gaining practical experience.

(4) In case of a payment default, the State Transmission Utility / the Licensees/ the State Load Dispatch Centre / Committee shall suspend the transaction forthwith and the transaction shall be scheduled only after the outstanding payments have been made in full. In case of persistent payment defaults, new applications from such a customer may not be entertained by the Committee for a period upto six months.

**7. General.**—(1) An application sent through E-Mail shall be processed by the Committee after receipt of the advance payments as per sub para 1 of para 6.

(2) Re-routing of an approved transaction through an alternate transmission system/network by the customer would be considered on its merits on receipt of a request.

(3) Amendment/modification to an existing agreement shall be treated as a fresh application.

(4) All costs/expenses/charges associated with Bank Draft etc. shall be borne by the applicant/ customer.

(5) The Applicant hereby agrees to keep the Commission, the Committee and the State Transmission Utility indemnified at all times and undertakes to indemnify, defend and save the Commission, the Committee and the State Transmission Utility harmless from any and all damages, losses, claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the transactions.

**Schedule-III**

**Form-I**

**[See regulation-23(2)]**

**TRANSMISSION SERVICES AGREEMENT**

**BETWEEN**

**(DISTRIBUTION/TRANSMISSION TRADING LICENSEE)**

**AND**

**(TRANSMISSION OPEN ACCESS CUSTOMER)**

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**TRANSMISSION SERVICES AGREEMENT**

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THIS AGREEMENT is entered into as of this.....day of ....., 2004.

**BETWEEN**

.....  
.....  
a distribution/transmission/trading licensee under section 14 of the Electricity Act, 2003, (hereinafter referred to as licensee) which expression shall unless repugnant to its subject or context, mean and include its successors in interest and permitted assigns) of the First Part;

**AND**

....., a company incorporated and existing under the laws of .....having its principal office at .....(hereinafter referred to as "Customer" which expression shall unless repugnant to its subject or context, mean and include its successors in interest and permitted assigns) of the Second Part,

(Collectively referred to as "Parties")

**WHEREAS:**

A. Licensee is engaged in the business of distribution/transmission/trading of electricity within the State of Himachal Pradesh;

B. .... is engaged in the business of .....and is desirous of availing the Distribution/Transmission Services and other related services offered by the licensee;

C. Under the applicable Regulations framed by the Commission, licensee is obligated to provide non-discriminatory open access to its distribution system/ transmission system to licensees and customers, on the terms and conditions specified in the Regulations;

D. The Regulations prescribe execution of a Transmission Services Agreement with the person availing of the open access.

NOW, THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL PROMISES, COVENANTS SET FORTH HEREINAFTER THE PARTIES HERETO AGREE AS FOLLOWS:—

#### **ARTICLE 1-DEFINITIONS:**

In addition to terms defined elsewhere in this Agreement, the following definitions shall apply hereunder:—

“**Act**” shall mean the Electricity Act, 2003 including any rules and regulations framed thereunder as may be amended from time to time;

“**Effective date**” shall mean the date upon which the Parties execute this Agreement;

“**Government**” shall mean either the State or Central Government as the case may be and shall include any department, agency or instrumentality thereof including any autonomous entity whether incorporated or not;

“**Regulations**” shall, unless the context otherwise requires, includes bye-laws, guidelines and procedures laid for Open Access and such other regulations as may be notified by the Commission from time to time;

“**Rules**” means, unless the context requires otherwise, rules as notified under the provisions of the Electricity Act, 2003 from time to time;

“**Transmission Services**” shall mean provision of services for the supply or conveyance of electricity by means of cables and overhead lines, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works and shall include such other services related and/or incidental thereto.

#### **ARTICLE 2—OBJECT AND SCOPE OF THE AGREEMENT:**

Licensee agrees and undertakes to provide the Transmission Services to the Consumer in accordance with the terms of this agreement, the Act and Regulations.

**ARTICLE 3—CONSUMER'S OBLIGATIONS :**

3.1 The Consumer agrees and undertakes to comply with the Regulations.

3.2 The Consumer agrees and undertakes to furnish and maintain the payment security mechanism/instrument for availing the Transmission Services as prescribed in this Agreement.

**ARTICLE 4—LICENSEE'S DUTIES AND OBLIGATIONS :**

4.1 Licensee shall provide the Transmission Services in an efficient manner and in accordance with the terms of this Agreement.

4.2 Licensee shall allow all facilities required by the Consumer including access to its facilities on it's land as may be required by the consumer.

4.3 Where due to technical constraints or break down, licensee's capability to undertake transmission of electricity is disrupted for any period of time, licensee shall as far as practicable provide prior notice to the consumer of such disruption in transmission of electricity and the estimated time period for rectification thereof.

**ARTICLE 5—SCHEDULING :**

5.1 The open access customer shall procure Transmission Services, in accordance with the terms and conditions of this Agreement. Prior to scheduling energy on licensee's transmission system, the open access customer shall follow the existing procedures. Subsequent to scheduling of energy, transmission requests will be accepted only for bona fide emergencies. Energy and any ancillary services must be scheduled on approved transmission requests no later than 12 noon IST on the day prior to the beginning of such schedule or on the last common business day of the week, as the case may be, before all weekend days and holidays for all transactions except hourly non-firm. Hourly non-firm energy and/or any associated ancillary services must be scheduled not less than..... minutes prior to the beginning of such schedule. The open access customer may initiate a new schedule or change an existing schedule submitted pursuant to this paragraph.

5.2 Notwithstanding any other provision of this Agreement, after 12 noon IST of any day, licensee shall have the right to utilize and/or sell, on a non-firm basis, any non-scheduled transmission service, excluding hourly non-firm, for transactions up to and including the following business day.

5.3 The open access customer shall communicate with licensee to facilitate daily scheduling of energy and any ancillary services required under this agreement. Schedules crossing licensee's control area boundaries shall be in whole megawatt increments. Schedules entirely within licensee control area shall be scheduled in tenths of megawatt increments (000.0 MWs/MVA).

#### ARTICLE 6—METERING AND RECONCILIATION:

6.1 Licensee shall be obligated to provide a metering installation at each of diverse points of connection and shall be responsible for compliance with all statutory and regulatory requirements in relation to the accuracy, use and installation of the metering installation.

#### ARTICLE 7—BILLINGS:

7.1 For any service provided to the open access customer pursuant to this Agreement, licensee will charge and bill the open access customer will pay licensee the rate and charge in accordance with the provisions of the regulations.

7.2 All billing shall be delivered daily/weekly/monthly by licensee to the open access customer as soon as reasonably practical after the end of the billing period, it being recognized that partial billing may be submitted in the event that portions of the billings may require additional time to prepare. All such billings, including partial billings, shall be due and payable by the open access customer within fifteen (15) calendar days from the date the billing is rendered, whether or not a party disputes all or any portion of the billing. If such due date falls on a Saturday, Sunday or a holiday observed by either Party, the payment shall be due and payable on the next following business day. All billing shall be deemed paid on the postmark date if deposited in first class mail with postage prepaid and shall be deemed paid upon receipt if another means of delivery is used. In the event the open access customer fails to make a payment of a billing when due and payable for any reason the open access customer shall pay interest @.....thereon to licensee. Each such daily interest calculation shall be on the basis of actual days and a three hundred sixty-five (365) day calendar year. The Parties agree that this paragraph shall not be a defense to any action to compel payment of a billing or for a determination of default or termination.

7.3 The open access customer shall be required to pay the transmission charges in accordance with the regulations framed by the Commission. The billing amount as raised by licensee may include any such additional taxes, levies or surcharges as may be imposed by the Government.

7.4 Any dispute between the Parties relating to any apparent discrepancy in billing and/or regarding incorrect calculation of the price adopted for billings by licensee ("Invoice Discrepancy") shall

be referred to and resolved by the dispute resolution mechanism prescribed in Article 24. All other disputes shall be referred to the Commission who shall deal with the same in terms of Sec 86(1)(f) of the Act. The open access customer shall not be entitled to withhold any payments to licensee in respect of the Invoice Amount, except in the event of an Invoice Discrepancy the consumer shall be entitled to withhold the disputed amounts.

7.5 Any failure on the part of the open access customer to pay all or any portion of an invoice issued by licensee, shall constitute a valid ground for licensee to discontinue provision of further Transmission Services, as also, to take such measures as may be prescribed under this Agreement.

7.6 Upon failure on the part of the open access customer to pay all or any portion of an invoice issued by licensee, other than under clause 7.4 to the extent of disputed amounts, the open access customer will not be entitled to make any additional reservations for Transmission Services and licensee shall be entitled to withhold the Transmission Services till such time the undisputed amounts are paid in full and credit reestablished.

#### **ARTICLE 8—MEETINGS:**

8.1 The Parties shall meet at least once in every calendar quarter at a location determined by the Parties, or if no such determination is made, then as determined by licensee. Parties may meet more often from time to time as it deems necessary.

8.2 At least twenty-one (21) days written notice of every meeting shall be given to each party or their authorized representatives at their registered address, provided always that a meeting may be convened by a shorter notice than twenty one (21) days with consent of both Parties.

8.3 The notice of each meeting shall include an agenda setting out the business proposed to be transacted at the meeting. Unless waived in writing by both Parties, any item not included in the agenda of a meeting shall not be considered at that meeting.

#### **ARTICLE 9—INSPECTION OF RECORDS OF THE OPEN ACCESS CUSTOMER:**

9.1 During office hours of the open access customer, licensee shall have full access to, and right to make copies of, all books of account, records and the like of the open access customer. Any information obtained by licensee through exercise of this right of access shall (i) be used by licensee only for purposes which are consistent with the terms of this Agreement and (ii) be subject to the confidentiality provisions contained herein.

**ARTICLE 10—REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES :**

10.1 The open access customer represents, warrants and covenants to the licensee as follows :

- (a) The open access customer is a person duly organized, validly existing and in good standing under the laws of India and has the corporate power and authority to enter into this Agreement and to perform its obligations hereunder.
- (b) All corporate actions on the part of the officers and directors of the open access customer (if applicable) necessary for the authorisation, execution and delivery of this Agreement by the open access customer and for the performance of all of its obligations hereunder have been taken.
- (c) This Agreement constitutes valid, legally binding and enforceable obligations of the open access customer.
- (d) The open access customer shall use its best efforts to assist the licensee to obtain and maintain all necessary approvals from the Government for the establishment and operation of the Company as contemplated by this Agreement and for the transfer of technology and payment of fees and royalties as contemplated by the ancillary Agreements.
- (e) The open access customer shall not take any action or cause the licensee to take any act on behalf of the licensee or binding upon the licensee, except with the licensee's specific consent in writing.
- (f) The open access customer shall take such further such acts, execute and deliver such further instruments and documents, and generally do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.
- (g) Execution, delivery or performance of this Agreement by the open access customer does not and will not conflict with, or result in a default, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance, pursuant to the open access customer's Charter documents (if applicable), or any agreement or other document, law, rule, regulation, order, judgment or decree to which the open access customer is a party or by which it may be bound or affected.

- (i) The open access customer has delivered to the licensee copies of financial statements, including the respective notes to such financial statements, all of which are true, complete and correct in accordance with the books and records of the open access customer, and the open access customer certifies that such financial statements have been prepared from the books and records of open access customer in accordance with generally accepted accounting principles consistently applied and maintained throughout the period indicated and present fairly the financial condition, assets and liabilities and the income and operations of the open access customer as their respective dates for the periods covered thereby.

10.2 The Licensee represents, warrants and covenants to the open access customer as follows:

- (a) The Licensee is duly organized, validly existing and in good standing under the laws of the India and has the power and authority to engage in this Agreement and to perform its obligations hereunder.
- (b) All actions on the part of the licensee and its officers and directors necessary for the authorisation, execution and delivery of this Agreement and for the performance of all, of its obligations hereunder has been taken.
- (c) This Agreement constitutes valid, legally binding and enforceable obligations of the licensee.
- (d) The Licensee shall not take any action or cause to be taken any action on behalf of the open access customer or binding upon the open access customer, except with the open access customer's specific consent in writing.
- (e) The Licensee shall take such further acts, execute and deliver such further instruments and documents, and generally do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.
- (f) Execution, delivery or performance of this Agreement by the licensee does not and will not conflict with, or result in a default, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance, pursuant to the licensee's certificate of incorporation or bye-laws, or any agreement or other document, law, rule, regulation, order, judgment or decree to which the licensee is a party or by which it may be bound or affected.

**ARTICLE 11—ACCOUNTING AND FINANCE :**

11.1 The open access customer shall keep true and accurate accounting records of all operations, and such records shall be open for inspection by each Party or by its duly authorised representatives at all times during normal business hours and with sufficient notice so as not to disrupt the open access customer's operations.

11.2 The financial statements of the open access customer shall be audited at the open access customer expense by an independent accounting firm selected by mutual agreement between the Parties.

11.3 The licensee shall submit to the Parties monthly accounting reports in a form to be mutually agreed upon between the Parties.

**ARTICLE 12—INDEMNITY; LIMITED LIABILITY :**

12.1 The open access customer agrees to indemnify the licensee and hold it harmless from and all against any and all claims, other than those ultimately determined to be founded on gross negligence or willful misconduct of licensee in a judicial proceeding, from and against any damages penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and court costs and disbursements) (hereinafter also collectively "**Loss**") incurred as a result of the assertion of any claim by any person or entity, arising out of or in connection with this Agreement, including in respect of any loss or damage arising from performance of system operator functions.

**ARTICLE 13—DEFAULT BY PARTIES AND CONSEQUENCES THEREOF :**

13.1 The following shall constitute the defaults by Parties and the consequences thereof:

**(i) Failure of the open access customer to pay an invoice without raising a dispute :**

Notwithstanding anything contained in Article 7, in the event of the failure by the open access customer to pay an invoice unless there occurs an Invoice Discrepancy, the licensee shall issue a notice to the open access customer ("Default Notice"), specifying that the open access customer has defaulted in its payment obligations towards licensee and that it shall be afforded an opportunity to pay the unpaid invoice amount, with interest thereon, within a prescribed time frame. If the open access customer does not comply with the terms of the Default Notice, the licensee shall be entitled without further recourse to unilaterally de-energise the connection granted to the open access customer and/or terminate this Agreement forthwith. The open access customer shall be required to

raise any Invoice Discrepancy in writing within..... days of receipt of the Invoice.

**(ii) Failure of the open access customer to adhere to the prescribed technical requirements:**

In the event of failure of the open access customer to comply with any technical requirements as may be prescribed and/or approved by the Commission from time to time, which adversely affects the power quality or security of the grid, performance or management of grid assets, the licensee shall be entitled to de-energise the connection granted to the open access customer forthwith.

**ARTICLE 14—NON-COMPLIANCE WITH OTHER REQUIREMENTS:**

14.1 In the case of any non-compliance of any requirements (other than those specifically mentioned in this Agreement) by any Party ("Defaulting party"), the non-Defaulting Party shall serve a notice to the Defaulting party, indicating the details of the non-compliance and requiring it to remedy such non-compliance within 15 days. The Parties may also, if they mutually agree, meet and hold discussions on the aforesaid issue.

14.2 If the Defaulting Party fails to remedy its non-compliance or provide the non-Defaulting party with a remedial plan within the notice period, the non-Defaulting party shall be entitled to seek termination of this Agreement in terms of this Agreement.

14.3 The Licensee recognises that it is in a monopoly position as regards the Transmission Services. Therefore, in the event the licensee fails to comply with the provisions of this Agreement and/or fulfill its obligations hereunder, the open access customer shall be entitled to approach the Commission and seek specific performance of the terms of this Agreement. This right shall be without prejudice to any other rights that the open access customer may have under law.

**ARTICLE 15—TERM AND TERMINATION:**

15.1 This Agreement is intended to be of enduring nature having regard to the mutual objectives and stipulations in this Agreement and shall take effect as of its execution and shall continue in force until terminated in accordance with the provisions of this Agreement.

15.2 Without prejudice to any claim for any antecedent breach, any Party shall be entitled at its option, on the happening of any of the following events, to terminate this Agreement:

- (a) by giving to the other Party thirty (30) days written notice if any other Party becomes

or is declared bankrupt or goes into voluntary or compulsory liquidation, except for the purpose of amalgamation or reconstruction; or

- (b) by giving to the other Party sixty (60) days written notice if any distress or attachment is levied, or any receiver is appointed in respect of the business or a substantial part of the property or assets of any other Party, or if it takes any similar action in consequences of debt; or
- (c) by giving to the other Parties sixty (60) days written notice if possible, in the event that there is a Government expropriation, nationalization or condemnation of all or substantial part of the assets or capital stock of any other Party; or
- (d) by giving to the open access customer a notice issued by the licensee, indicating that the open access customer has failed to pay its dues as raised under an Invoice issued to it despite the issuance of a notice of default as referred to in Article 13.
- (e) by notice in writing to the other Parties (effect upon dispatch) if any other Party is in breach of any provision of this Agreement and such breach has not been remedied (to the reasonable satisfaction of the Parties not in breach) within sixty (60) days of notice of such breach having been served on that Party by any other Party; or
- (f) by notice in writing to the other Party if any direction or order from any authority in India or any change in applicable statutes, rules and regulations or the Government policy is made which prevents or significantly impairs the implementation of this Agreement or directly or indirectly so restricts the scope and exercise of the right of either of Party as concerns the Company so as to render its objectives effectively impossible.
- (g) by giving to the other Parties an advance notice of at least one eighty days to the effect that one party desires that this Agreement be terminated.

15.3 The termination of this Agreement shall not relieve any Party of any obligation or liability accrued prior to the date of termination.

15.4 The Parties shall promptly provide required information and documents in obtaining the requisite Governmental or statutory approvals to implement the provisions of this Article 14.

15.5 The foregoing shall not limit the ability of either Party to seek legal and equitable

remedies related to a material Breach by the other Party or the failure of the other Party to perform any other duty or obligation under this Agreement.

#### **ARTICLE 16—CONFIDENTIALITY:**

16.1 The Parties undertake to keep the nature of the Transaction confidential and also agree that the disclosure of such information without the approval of other Party, except when such disclosure is essential for the purpose of obtaining any permission of the Governmental Authority and/or to its legal advisors, shall result in material damage to the other Party.

16.2 Any confidential information provided to a Party or its representatives in writing and identified as being confidential ("**Confidential Information**") shall be held in confidence and shall not be disclosed to any third party, except as reasonably required in the fulfillment of this Agreement or in connection with obtaining any necessary consents in connection with this Agreement. Notwithstanding the foregoing, the obligation of confidentiality shall not apply to any disclosure (i) of information that is in or enters the public domain through no fault of the receiving Party, (ii) of information that was in the possession of the receiving Party prior to receipt under this Agreement, or (iii) required by law, regulation, legal process or order of any court or governmental body having jurisdiction, but the receiving Party shall notify, in advance, the disclosing Party/ies as soon as reasonably possible, to the extent lawful, so that the disclosing Party/ies can seek protections or exceptions to the disclosure.

#### **ARTICLE 17—WAIVER OF CLAIMS:**

17.1 In no event shall a Party be liable to the other Party for any indirect, consequential, economic, punitive or similar damages arising from or in any way connected with this Agreement.

17.2 Any waiver at any time by the other Party of its rights with respect to a default or breach under this Agreement shall not be deemed a waiver with respect to any other default or breach or other matter arising in connection herewith. Any delay short of the statutory period of limitation in asserting or enforcing any right shall not be deemed a waiver of such right.

17.3 The Parties will exercise reasonable diligence and care to meet their respective contract obligations and duties.

#### **ARTICLE 18—NO ASSIGNMENT:**

18.1 The open access customer shall not assign, sell, convey or otherwise transfer this

Agreement or any Confirmation Agreement, or any of its rights or obligations thereunder, without prior express written consent of the Seller. The assignee or other transferee shall assume all duties and obligations arising from and after the time of the consent to transfer by the Seller, but such assignment or transfer shall not release the assigning or transferring open access customer from its duties and obligations unless specifically provided in the written consent and in the assignment, conveyance or transfer document. All duties and obligations arising prior to the assignment or transfer shall remain the duty and obligation of the Party unless the Parties specifically agree otherwise.

#### **ARTICLE 19—FORCE MAJEURE:**

19.1 If either Party is prevented from performing its obligation under this Agreement from causes which are beyond its reasonable control, such as, but not limited to, any condition or event beyond the control of the Party affected, including but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, explosion, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of reasonable diligence such Party could not reasonably have been expected to avoid and which by exercise of reasonable diligence it shall be unable to overcome; the Party is excused from non-performance of its obligation during the period while such cause continues to exist, but if such cause continues to exist and prevent performance by the Party of the obligation for more than one month, the other Party may terminate this Agreement effective upon delivery to the non-performing Party of written notice of such termination.

19.2 Either Party rendered unable to fulfill any of its obligations under the Agreement by reason of a Force Majeure shall provide notice of said Force Majeure to the other Party within 24 hours of the occurrence giving rise to the claim of the Force Majeure, provide written notice within 3 working days thereafter and use reasonable diligence to remove such Force Majeure with all reasonable dispatch.

19.3 Should the Force Majeure exist for a period of three consecutive months, the Party not claiming the Force Majeure may cancel the Transmission Service by providing a thirty-day written notice at the conclusion of the three month period.

#### **ARTICLE 20—NOTICES**

20.1 All notices, billings, payments and other communications shall be given in writing and sent by mail, postage prepaid, signed by (or by some person duly authorised by) the person giving it and may be served by leaving it or sending it by facsimile, prepaid recorded delivery as registered post, addressed as follows (or to such other address as shall have been duly notified in accordance with this

Article):

If to the open access customer:

If to the licensee :

20.2 All notices given in accordance with Article- shall be deemed to have been served as follows:

- (a) if delivered by hand, at the time of delivery;
- (b) if posted, at the expiration of six (6) days after the envelop containing the same was delivered into the custody of the postal authorities;
- (c) if communicated by facsimile, on receipt of confirmation of successful transmission.

#### ARTICLE 21—SEVERABILITY:

21.1 Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement should be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement. In such event, the Parties shall negotiate, in good faith, a valid, legal and enforceable substitute provision, which most nearly effects the Parties' intent in entering into this Agreement.

#### ARTICLE 22—ENTIRE AGREEMENT:

22.1 This Agreement, and all attachments set forth the entire agreement of the Parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, understandings and representations, written and oral. In case of any inconsistency between this Agreement and any Schedule or any attachment, this Agreement shall prevail.

#### ARTICLE 23—JURISDICTION

Except as specifically provided for otherwise, in this Agreement, the Parties submit to the exclusive jurisdiction of the courts in the State Himachal Pradesh.

#### ARTICLE 24—DISPUTE RESOLUTION

24.1 Except as specifically provided for otherwise, in this Agreement, the Parties shall seek to resolve any dispute, controversy, claim or breach arising out of or in relation to this Agreement including any dispute as to the existence or validity of this Agreement, by amicable arrangement and compromise, and only if the Parties fail to resolve the same by amicable arrangement and compromise within a period of sixty (60) days of receipt of written notice of the same by the other Party, either Party may resort to arbitration as provided for in Clause 24.2 hereof.

24.2 In the event of any question, dispute or difference arising under this agreement or in connection therewith except as to matters for which the manner of dispute resolution is specifically provided under this agreement, Act or Regulations, the same shall be finally settled through arbitration.

proceedings by a sole arbitrator to be appointed by the Commission.

24.3 The place of arbitration shall be Shimla. The language of arbitration shall be English.

24.4 The Parties shall bear their own costs for conduct of arbitration proceedings, subject to the final award.

#### ARTICLE 25—ASSUMPTION OF RISK

25.1 Each Party hereto acknowledges (i) the risks of its undertakings hereunder, (ii) the uncertainty of the benefits and obligations hereunder, and (iii) is assumption of such risks and uncertainty. Each Party has conducted its own due diligence and requested and reviewed any contracts, business plans, financial documents and other written material as in such Party's opinion shall be the basis of that Party's decision to enter into this Agreement.

#### ARTICLE 26—MODIFICATION

26.1 No provisions of this Agreement may be modified or amended unless the Parties adopt the procedure contained herein. Where any Party is of the view that the terms of this Agreement require any modification or amendment, to ensure that it is in consonance with the relevant regulatory and statutory provisions, the Parties shall initiate a consultative process, whereby the Parties shall meet and hold discussions on the aforesaid issues. In the event that the Parties cannot agree on whether this Agreement requires modification or amendment, they shall refer such difference to an independent expert, who shall decide the said issue. However, the Parties may modify this Agreement if they mutually agree to do so, in writing.

#### ARTICLE 27—HEADINGS

27.1 The article, paragraph and other headings in this Agreement are provided for convenience only and in no way define or limit the scope or the intent of this Agreement.

#### ARTICLE 28—COUNTERPARTS

28.1 This Agreement may be executed in any number of counterparts. The counterparts shall be deemed to constitute one instrument.

IN WITNESS WHEREOF, the Parties by their duly authorised representatives have executed this Agreement on the day first above written.

Open Access Customer

By:

Name:

Title:

Date:

Witness:

The Licensee

By:

Name:

Title:

Date:

Witness:

Schedule-III

Form-I

[See regulation-23(2)]

**TRANSMISSION SERVICES AGREEMENT****BETWEEN****(DISTRIBUTION/TRANSMISSION/TRADING LICENSEE)****AND****(TRANSMISSION OPEN ACCESS CUSTOMER)**

**Schedule-III**

**Form-II**

**[See regulation-23(2)]**

**DISTRIBUTION SERVICES AGREEMENT**

**BETWEEN**

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**(DISTRIBUTION/TRANSMISSION/TRADING LICENSEE)**

**AND**

---

**(DISTRIBUTION OPEN ACCESS CUSTOMER)**

**DISTRIBUTION SERVICES AGREEMENT**

THIS AGREEMENT is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

BETWEEN

.....  
 .....  
 a distribution/transmission/trading licensee under section 14 of the Electricity Act, 2003, (hereinafter referred to as the Licensee) which expression shall unless repugnant to its subject or context, mean and include its successors in interest and permitted assigns of the First Part;

AND

....., a company incorporated and existing under the laws of \_\_\_\_\_ having its principal office at \_\_\_\_\_ (hereinafter referred to as "Open Access Customer" which expression shall unless repugnant to its subject or context, mean and include its successors in interest and permitted assigns) of the Second Part,

(Collectively referred to as "Parties")

**WHEREAS:**

- A. Licensee is engaged in the business of inter alia distribution of electricity within the State of Himachal Pradesh;
- B. \_\_\_\_\_ is engaged in the business of \_\_\_\_\_ and is desirous of availing the Distribution Services and other related services offered by the licensee;
- C. Under the applicable Regulations framed by the Commission, licensee is obligated to provide non-discriminatory open access to its distribution system to licensees and consumers, on the terms and conditions specified in the Regulations;
- D. The Regulations prescribe execution of a Distribution Services Agreement with the person availing of the open access.

NOW, THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL PROMISES, COVENANTS SET FORTH HEREINAFTER THE PARTIES HERETO AGREE AS FOLLOWS:

## ARTICLE 1—DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions shall apply hereunder:—

“Act” shall mean the Electricity Act, 2003 including any rules and regulations framed thereunder as may be amended from time to time;

“Effective date” shall mean the date upon which the parties execute this Agreement;

“Government” shall mean either the State or Central Government as the case may be and shall include any department, agency or instrumentality thereof including any autonomous entity whether incorporated or not;

“regulations” shall, unless the context indicates otherwise, include business byelaws, guidelines and procedures for open access and such other regulations as may be notified by the Commission from time to time.

“rules” means, unless the context indicates otherwise, rules as notified under the provisions of the Electricity Act, 2003 from time to time.

“Distribution services” shall mean provision of services for the supply or conveyance of electricity by means of system of wires and associated facilities between delivery points on the transmission lines or the generating station connection and the point of connection to the installation of the consumers.

## ARTICLE 2—OBJECT AND SCOPE OF THE AGREEMENT

Licensee agrees and undertakes to provide the Distribution Services to the open access customer in accordance with the terms of this agreement, the Act and Regulations.

## ARTICLE 3—OPEN ACCESS CUSTOMERS OBLIGATIONS

3.1 The open access customer agrees and undertakes to comply with the Regulations.

3.2 The open access customer agrees and undertakes to furnish and maintain the payment security mechanism / instrument for availing the Distribution Services as prescribed in this Agreement.

#### ARTICLE 4—LICENSEE'S DUTIES AND OBLIGATIONS

4.1 Licensee shall provide the Distribution Services in an efficient manner and in accordance with the terms of this Agreement.

4.2 Licensee shall allow all facilities required by the open access customer including access to its facilities on its land as may be required by the open access customer.

4.3 Where due to technical constraints or break down, the licensee's capability to undertake distribution of electricity is disrupted for any period of time, licensee shall as far as practicable provide prior notice to the open access customer of such disruption in distribution of electricity and the estimated time period for rectification thereof.

#### ARTICLE 5—SCHEDULING

5.1 The open access customer shall procure Distribution Services, in accordance with the terms and conditions of this Agreement. Prior to scheduling energy on the licensee's distribution system, the open access customer shall follow the existing procedures. Subsequent to scheduling of energy, requests for injunction /drawl of additional quantum of energy will be accepted only for bona fide emergencies. Energy and any ancillary services must be scheduled on the basis of approved requests no later than 12 noon IST on the day prior to the beginning of such schedule or on the last common business day of the week, as the case may be, before all weekend days and holidays for all transactions except hourly non-firm. Hourly non-firm energy and/or any associated ancillary services must be scheduled not less than \_\_\_\_\_ minutes prior to the beginning of such schedule. The open access customer may initiate a new schedule or change an existing schedule submitted pursuant to this paragraph.

5.2 Notwithstanding any other provision of this Agreement, after 12 noon IST of any day, licensee shall have the right to utilize and/or sell, on a non-firm basis, any non-scheduled transmission service, excluding hourly non-firm, for transactions up to and including the following business day.

5.3 The open access customer shall communicate with licensee to facilitate daily scheduling of energy and any ancillary services required under this agreement. Schedules crossing licensee's control area boundaries shall be in whole megawatt increments. Schedules entirely within licensee control area shall be scheduled in tenths of megawatt increments (000.0 MWs/MVA).

## ARTICLE 6—METERING AND RECONCILIATION

6.1 The Licensee shall be obligated to provide a metering installation at each of diverse points of connection and shall be responsible for compliance with all statutory and regulatory requirements in relation to the accuracy, use and installation of the metering installation.

## ARTICLE 7—BILLINGS

7.1 For any service provided to the open access customer pursuant to this Agreement, licensee will charge and bill the open access customer and the open access customer will pay the rates and charges the licensee in accordance with the provisions of Schedule \_\_\_\_.

7.2 All billing shall be delivered daily/weekly/monthly by licensee to the open access customer as soon as reasonably practical after the end of the billing period, it being recognized that partial billing may be submitted in the event that portions of the billings may require additional time to prepare. All such billings, including partial billings, shall be due and payable by the open access customer within fifteen (15) calendar days from the date the billing is rendered, whether or not a party disputes all or any portion of the billing. If such due date falls on a Saturday, Sunday or a holiday observed by either Party, the payment shall be due and payable on the next following business day. All billing shall be deemed paid on the postmark date if deposited in first class mail with postage prepaid and shall be deemed paid upon receipt if another means of delivery is used. In the event the open access customer fails to make a payment of a billing when due and payable for any reason the open access customer shall pay interest @ \_\_\_\_\_ thereon to the licensee. Each such daily interest calculation shall be on the basis of actual days and a three hundred sixty-five (365) day calendar year. The Parties agree that this paragraph shall not be a defence to any action to compel payment of a billing or for a determination of default or termination.

7.3 The open access customer shall be required to pay the wheeling charges and surcharge and additional surcharge in accordance with the regulations framed by the Commission. The billing amount as raised by the licensee may include any such additional taxes, levies as may be imposed by the Government.

7.4 Any dispute between the Parties relating to any apparent discrepancy in billing and/or regarding incorrect calculation of the price adopted for billings by the licensee ("Invoice Discrepancy") shall be referred to and resolved by the dispute resolution mechanism prescribed in Article 24. The open access customer shall not be entitled to withhold any payments to the licensee in respect of the Invoice Amount.

7.5 Any failure on the part of the open access customer to pay all or any portion of an invoice issued by the licensee, shall constitute a valid ground for the licensee to discontinue provision of further Distribution Services, as also, to take such measures as may be prescribed under this Agreement.

7.6 Upon failure on the part of the open access customer to pay all or any portion of an invoice issued by the licensee, the open access customer will not be entitled to make any additional reservations for Distribution Services and the licensee shall be entitled to withhold the Distribution Services till such time the undisputed amounts are paid in full and credit re-established.

#### ARTICLE 8—MEETINGS

8.1 The Parties shall meet at least once in every calendar quarter at a location determined by the Parties, or if no such determination is made, then as determined by the licensee. Parties may meet more often from time to time as it deems necessary.

8.2 At least twenty-one (21) days written notice of every meeting shall be given to each Party or their authorized representatives at their registered address, provided always that a meeting may be convened by a shorter notice than twenty-one (21) days with consent of both Parties.

8.3 The notice of each meeting shall include an agenda setting out the business proposed to be transacted at the meeting. Unless waived in writing by both Parties, any item not included in the agenda of a meeting shall not be considered at that meeting.

#### ARTICLE 9—INSPECTION OF RECORDS OF THE OPEN ACCESS CUSTOMER

9.1 During office hours of the open access customer, the licensee shall have full access to, and right to make copies of, all books of account, records and the like of the open access customer. Any information obtained by the licensee through exercise of this right of access shall (i) be used by the licensee only for purposes which are consistent with the terms of this Agreement and (ii) be subject to the confidentiality provisions contained herein.

#### ARTICLE 10—REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

10.1 The open access customer represents, warrants and covenants to the licensee as follows:—

- (a) The open access customer is a person duly organized, validly existing and in good standing under the laws of India and has the corporate power and authority to enter

into this Agreement and to perform its obligations hereunder.

- (b) All corporate actions on the part of the officers and the directors of the open access customer (if applicable) necessary for the authorisation, execution and delivery of this Agreement by the open access customer and for the performance of all of its obligations hereunder have been taken.
- (c) This Agreement constitutes valid, legally binding and enforceable obligations of the open access customer.
- (d) The open access customer shall use its best efforts to assist the licensee to obtain and maintain all necessary approvals from the Government for the establishment and operation of the Company as contemplated by this Agreement and for the transfer of technology and payment of fees and royalties as contemplated by the ancillary Agreements.
- (e) The open access customer shall not take any action or cause licensee to take any act on behalf of the licensee or binding upon the licensee, except with the licensee's specific consent in writing.
- (f) The open access customer shall take such further such acts, execute and deliver such further instruments and documents, and generally do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.
- (g) Execution, delivery or performance of this Agreement by the open access customer does not and will not conflict with, or result in a default, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance, pursuant to the open access customer's Charter documents (if applicable), or any agreement or other document, law, rule, regulation, order, judgment or decree to which the open access customer is a party or by which it may be bound or affected.
- (i) The open access customer has delivered to the licensee copies of financial statements, including the respective notes to such financial statements, all of which are true, complete and correct in accordance with the books and records of the open access customer, and the open access customer certifies that such financial statements have been prepared from the books and records of the open access customer in accordance with generally accepted accounting principles consistently applied and maintained throughout the period indicated and present fairly the financial condition, assets and

liabilities and the income and operations of the open access customer as their respective dates for the periods covered thereby.

10.2 The Licensee represents, warrants and covenants to the open access customer as follows:—

- (a) The Licensee is duly organized, validly existing and in good standing under the laws of the India and has the power and authority to engage in this Agreement and to perform its obligations hereunder.
- (b) All actions on the part of the licensee and it's the officers and the directors necessary for the authorisation, execution and delivery of this Agreement and for the performance of all of its obligations hereunder has been taken.
- (c) This Agreement constitutes valid, legally binding and enforceable obligations of the licensee.
- (d) The Licensee shall not take any action or cause to be taken any action on behalf of the open access customer or binding upon the open access customer, except with the open access customer's specific consent in writing.
- (e) The Licensee shall take such further acts, execute and deliver such further instruments and documents, and generally do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.
- (f) Execution, delivery or performance of this Agreement by the licensee does not and will not conflict with, or result in a default, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance, pursuant to the licensee's certificate of incorporation or bylaws, or any agreement or other document, law, rule, regulation, order, judgment or decree to which the licensee is a party or by which it may be bound or affected.

#### ARTICLE 11—ACCOUNTING AND FINANCE

11.1 The open access customer shall keep true and accurate accounting records of all operations, and such records shall be open for inspection by each Party or by its duly authorised representatives at all times during normal business hours and with sufficient notice so as not to disrupt

the open access customer's operations.

11.2 The financial statements of the open access customer shall be audited at the open access customer expense by an independent accounting firm selected by mutual agreement between the Parties.

11.3 The licensee shall submit to the Parties monthly accounting reports in a form to be mutually agreed upon between the Parties.

#### ARTICLE 12—Indemnity; Limited Liability

12.1 The open access customer agrees to indemnify the licensee and hold it harmless from and against any and all claims, other than those ultimately determined to be founded on gross negligence or willful misconduct of the licensee in a judicial proceeding, from and against any damages penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and court costs and disbursements) (hereinafter also collectively "Loss") incurred as a result of the assertion of any claim by any person or entity, arising out of or in connection with this Agreement, including in respect of any loss or damage arising from performance of system operator functions.

#### ARTICLE 13—DEFAULT BY PARTIES AND CONSEQUENCES THEREOF

13.1 The following shall constitute the defaults by the parties and the consequences thereof:

##### (i) Failure of the open access customer to pay an invoice without raising a dispute

Notwithstanding anything contained in Article 7, in the event of the failure by the open access customer to pay an invoice unless there occurs an Invoice Discrepancy, the licensee shall issue a notice to the open access customer ("Default Notice"), specifying that the open access customer has defaulted in its payment obligations towards the licensee and that it shall be afforded an opportunity to pay the unpaid invoice amount, with interest thereon, within a prescribed time frame. If the open access customer does not comply with the terms of the Default Notice, the licensee shall be entitled without further recourse to unilaterally de-energise the connection granted to the open access customer and/or terminate this Agreement forthwith. The open access customer shall be required to raise any Invoice Discrepancy in writing within \_\_\_\_ days of receipt of the Invoice.

**(ii) Failure of the open access customer to adhere to the prescribed technical requirements :**

In the event of failure of the open access customer to comply with any technical requirements as may be prescribed and/or approved by the Commission from time to time, which adversely affects the power quality or security of the grid, performance or management of grid assets, the licensee shall be entitled to de-energise the connection granted to the open access customer forthwith.

**ARTICLE 14—NON-COMPLIANCE WITH OTHER REQUIREMENTS**

14.1 In the case of any non-compliance of any requirements (other than those specifically mentioned in this Agreement) by any Party ("Defaulting party"), the non-Defaulting Party shall serve a notice to the Defaulting party, indicating the details of the non-compliance and requiring it to remedy such non-compliance within 15 days. The Parties may also, if they mutually agree, meet and hold discussions on the aforesaid issue.

14.2 If the Defaulting Party fails to remedy its non-compliance or provide the non-Defaulting party with a remedial plan within the notice period, the non-Defaulting party shall be entitled to seek termination of this Agreement in terms of this Agreement.

14.3 The Licensee recognises that it is in a monopoly position as regards the Distribution Services. Therefore, in the event the licensee fails to comply with the provisions of this Agreement and/or fulfill its obligations hereunder, the open access customer shall be entitled to approach the Commission and seek specific performance of the terms of this Agreement. This right shall be without prejudice to any other rights that the open access customer may have under law.

**ARTICLE 15—TERM AND TERMINATION**

15.1 This Agreement is intended to be of enduring nature having regard to the mutual objectives and stipulations in this Agreement and shall take effect as of its execution and shall continue in force until terminated in accordance with the provisions of this Agreement.

15.2 Without prejudice to any claim for any antecedent breach, any Party shall be entitled at its option, on the happening of any of the following events, to terminate this Agreement:

- (a) by giving to the other Party thirty (30) days written notice if any other Party becomes or is declared bankrupt or goes into voluntary or compulsory liquidation, except for

the purpose of amalgamation or reconstruction; or

- (b) by giving to the other Party sixty (60) days written notice if any distress or attachment is levied, or any receiver is appointed in respect of the business or a substantial part of the property or assets of any other Party, or if it takes any similar action in consequences of debt; or
- (c) by giving to the other Parties sixty (60) days written notice if possible, in the event that there is a Government expropriation, nationalization or condemnation of all or substantial part of the assets or capital stock of any other Party; or
- (d) by giving to the open access customer a notice issued by the licensee, indicating that the open access customer has failed to pay its dues as raised under an Invoice issued to it despite the issuance of a notice of default as referred to in Article 13.
- (e) by notice in writing to the other Parties (effect upon dispatch) if any other Party is in breach of any provision of this Agreement and such breach has not been remedied (to the reasonable satisfaction of the Parties not in breach) within sixty (60) days of notice of such breach having been served on that Party by any other Party; or
- (f) by notice in writing to the other Party if any direction or order from any authority in India or any change in applicable statutes, rules and regulations or the Government policy is made which prevents or significantly impairs the implementation of this Agreement or directly or indirectly so restricts the scope and exercise of the right of either of Party as concerns the Company so as to render its objectives effectively impossible; or
- (g) by giving to the other Parties an advance notice of at least one eighty days to the effect that one party desires that this Agreement be terminated.

15.3 The termination of this Agreement shall not relieve any Party of any obligation or liability accrued prior to the date of termination.

15.4 The Parties shall promptly provide required information and documents in obtaining the requisite Governmental or statutory approvals to implement the provisions of this Article 14.

15.5 The foregoing shall not limit the ability of either Party to seek legal and equitable remedies related to a material Breach by the other Party or the failure of the other Party to perform any

other duty or obligation under this Agreement.

## ARTICLE 16—CONFIDENTIALITY

16.1 The Parties undertake to keep the nature of the Transaction confidential and also agree that the disclosure of such information without the approval of other Party, except when such disclosure is essential for the purpose of obtaining any permission of the Governmental Authority and/or to its legal advisors, shall result in material damage to the other Party.

16.2 Any confidential information provided to a Party or its representatives in writing and identified as being confidential (“**Confidential Information**”) shall be held in confidence and shall not be disclosed to any third party, except as reasonably required in the fulfillment of this Agreement or in connection with obtaining any necessary consents in connection with this Agreement. Notwithstanding the foregoing, the obligation of confidentiality shall not apply to any disclosure (i) of information that is in or enters the public domain through no fault of the receiving Party, (ii) of information that was in the possession of the receiving Party prior to receipt under this Agreement, or (iii) required by law, regulation, legal process or order of any court or governmental body having jurisdiction, but the receiving Party shall notify, in advance, the disclosing Party/ies as soon as reasonably possible, to the extent lawful, so that the disclosing Party/ies can seek protections or exceptions to the disclosure.

## ARTICLE 17—WAIVER OF CLAIMS

17.1 In no event shall a Party be liable to the other Party for any indirect, consequential, economic, punitive or similar damages arising from or in any way connected with this Agreement.

17.2 Any waiver at any time by the other Party of its rights with respect to a default or breach under this Agreement shall not be deemed a waiver with respect to any other default or breach or other matter arising in connection herewith. Any delay short of the statutory period of limitation in asserting or enforcing any right shall not be deemed a waiver of such right.

17.3 The Parties will exercise reasonable diligence and care to meet their respective contract obligations and duties.

## ARTICLE 18—NO ASSIGNMENT

18.1 The open access customer shall not assign, sell, convey or otherwise transfer this Agreement or any Confirmation Agreement, or any of its rights or obligations thereunder, without prior

express written consent of the Seller. The assignee or other transferee shall assume all duties and obligations arising from and after the time of the consent to transfer by the Seller, but such assignment or transfer shall not release the assigning or transferring open access customer from its duties and obligations unless specifically provided in the written consent and in the assignment, conveyance or transfer document. All duties and obligations arising prior to the assignment or transfer shall remain the duty and obligation of the Party unless the Parties specifically agree otherwise.

## ARTICLE 19—FORCE MAJEURE

19.1 If either Party is prevented from performing its obligation under this Agreement from causes which are beyond its reasonable control, such as, but not limited to, any condition or event beyond the control of the Party affected, including but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, explosion, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of reasonable diligence such Party could not reasonably have been expected to avoid and which by exercise of reasonable diligence it shall be unable to overcome; the Party is excused from non-performance of its obligation during the period while such cause continues to exist, but if such cause continues to exist and prevent performance by the Party of the obligation for more than one month, the other Party may terminate this Agreement effective upon delivery to the non-performing Party of written notice of such termination.

19.2 Either Party rendered unable to fulfill any of its obligations under the Agreement by reason of a Force Majeure shall provide notice of said Force Majeure to the other Party within 24 hours of the occurrence giving rise to the claim of the Force Majeure, provide written notice within 3 working days thereafter and use reasonable diligence to remove such Force Majeure with all reasonable dispatch.

19.3 Should the Force Majeure exist for a period of three consecutive months, the Party not claiming the Force Majeure may cancel the Distribution Service by providing a thirty-day written notice at the conclusion of the three month period.

## ARTICLE 20—NOTICES

20.1 All notices, billings, payments and other communications shall be given in writing and sent by mail, postage prepaid, signed by (or by some person duly authorised by) the person giving it and may be served by leaving it or sending it by facsimile, prepaid recorded delivery as registered post, addressed as follows (or to such other address as shall have been duly notified in accordance with this Article):

If to the open access customer:

\_\_\_\_\_  
\_\_\_\_\_

If to the licensee :

\_\_\_\_\_  
\_\_\_\_\_

202 All notices given in accordance with Article- shall be deemed to have been served as follows:

- (a) if delivered by hand, at the time of delivery;
- (b) if posted, at the expiration of six (6) days after the envelop containing the same was delivered into the custody of the postal authorities;
- (c) if communicated by facsimile, on receipt of confirmation of successful transmission.

#### **ARTICLE 21—SEVERABILITY**

21.1 Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement should be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement. In such event, the Parties shall negotiate, in good faith, a valid, legal and enforceable substitute provision, which most nearly effects the Parties' intent in entering into this Agreement.

#### **ARTICLE 22—ENTIRE AGREEMENT**

22.1 This Agreement, the Exhibits and all attachments set forth the entire agreement of the Parties with respect to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, understandings and representations, written and oral. In case of any inconsistency between this Agreement and any Schedule or any attachment, this Agreement shall prevail.

#### **ARTICLE 23—JURISDICTION**

Except as specifically provided for otherwise, in this Agreement, the Parties submit to the exclusive jurisdiction of the courts in the State of Himachal Pradesh.

## ARTICLE 24—DISPUTE RESOLUTION

24.1 Except as specifically provided for otherwise, in this Agreement, the Parties shall seek to resolve any dispute, controversy, claim or breach arising out of or in relation to this Agreement including any dispute as to the existence or validity of this Agreement, by amicable arrangement and compromise, and only if the Parties fail to resolve the same by amicable arrangement and compromise within a period of sixty (60) days of receipt of written notice of the same by the other Party, either Party may resort to arbitration as provided for in Clause 24.2 hereof.

24.2 Subject to section 86 (1) (f) of the Act, in the event of any question, dispute or difference arising under this agreement or in connection therewith except as to matters for which the manner of dispute resolution is specifically provided under this agreement, Act or Regulations, the same shall be finally settled through arbitration proceedings by a sole arbitrator to be appointed by the Commission.

24.3 The place of arbitration shall be Shimla. The language of arbitration shall be English.

24.4 The Parties shall bear their own costs for conduct of arbitration proceedings, subject to the final award.

## ARTICLE 25—ASSUMPTION OF RISK

25.1 Each Party hereto acknowledges (i) the risks of its undertakings hereunder, (ii) the uncertainty of the benefits and obligations hereunder, and (iii) is assumption of such risks and uncertainty. Each Party has conducted its own due diligence and requested and reviewed any contracts, business plans, financial documents and other written material as in such Party's opinion shall be the basis of that Party's decision to enter into this Agreement.

## ARTICLE 26—MODIFICATION

26.1 No provisions of this Agreement may be modified or amended unless the Parties adopt the procedure contained herein. Where any Party is of the view that the terms of this Agreement require any modification or amendment, to ensure that it is in consonance with the relevant regulatory and statutory provisions, the Parties shall initiate a consultative process, whereby the Parties shall meet and hold discussions on the aforesaid issues. In the event that the Parties cannot agree on whether this Agreement requires modification or amendment, they shall refer such difference to an independent expert, who shall decide the said issue. However, the Parties may modify this Agreement if they mutually agree to do so, in writing.

**ARTICLE 27—HEADINGS**

27.1 The article, paragraph and other headings in this Agreement are provided for convenience only and in no way define or limit the scope or the intent of this Agreement.

**ARTICLE 28—COUNTERPARTS**

28.1 This Agreement may be executed in any number of counterparts. The counterparts shall be deemed to constitute one instrument.

IN WITNESS WHEREOF, the Parties by their duly authorised representatives have executed this Agreement on the day first above written.

Open access customer

Licensee

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Witness:

Witness: